Filed 1/26/10 Black v. Cal. Dept. of Real Estate CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JEFFREY OWEN BLACK et al., Plaintiffs and Appellants, v. CALIFORNIA DEPARTMENT OF REAL ESTATE, Defendant and Respondent.	B212229 (Los Angeles County Super. Ct. No. BS 114378)

APPEAL from a judgment of the Superior Court of Los Angeles County, James Chalfant, Judge. Affirmed.

Shane, DiGiuseppe & Rodgers, Stephen A. DiGiuseppe; Lascher & Lascher and Wendy C. Lascher for Plaintiffs and Appellants.

Edmund G. Brown, Jr., Attorney General, W. Dean Freeman, Felix E. Leatherwood, and Anthony F. Sgherzi, Deputy Attorneys General, for Defendant and Respondent.

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Jeffrey Owen Black and Dana Lynn Potter (sometimes appellants) appeal from the superior court's judgment denying their petition for writ of mandate to overturn a decision of respondent California Department of Real Estate (DRE) to revoke Black's real estate broker's license for two years, to grant him a restricted license and to publicly reprove Potter. The superior court ruled the discipline to be justified. Appellants contend the court's decision is unfounded and wrong as a matter of law. We affirm.

FACTS

Black is a long time real estate sales agent who obtained his sales license in 1979 and broker's license in 1986. Potter has been licensed as a real estate salesman since 1977. Black and Potter co-own Pinnacle Estate Properties, Inc. (Pinnacle), a corporation they formed in 1985. Black acts as chief financial officer and is licensed as the designated broker-officer of Pinnacle. He oversees escrow and sales operations as well as supervises employees for Pinnacle. Potter serves as chief executive officer and president of Pinnacle, with responsibility to train and motivate agents. As of December 2007, the time of the administrative hearing, Pinnacle had seven sales offices, 628 salespeople and 19 broker associates.

Pinnacle does business with about two dozen title companies, including many companies affiliated with or underwritten by either Fidelity National Financial, Inc., or First American. Pinnacle uses Fidelity or Fidelity-owned companies[1] (collectively, Fidelity) in about 40 to 50 percent of its real estate transactions. This percentage remained the same between 2004 to the time of hearing.

In August 2004, Fidelity representatives approached appellants to discuss a new title insurance program that would allow appellants to generate an ancillary stream of income from title insurance Pinnacle originated. The arrangement called for appellants to act as alleged "reinsurers" for title insurance policies written by Fidelity for Pinnacle

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[1] Fidelity operates several subsidiaries including Fidelity National Title, Chicago Title, TICOR Title, American Title Company, Security Union Title, Security Title, Alamo Title, National Title Insurance Company of New York, Inc., Fidelity National Information Services and AIS Fidelity Information Services.

clients. Under the arrangement, when Fidelity issued a title insurance policy on a Pinnacle real estate transaction, FNF Title Reinsurance Company (FNF), a subsidiary of Fidelity, would execute reinsurance agreements with the issuing title company. Pinnacle would then assume a percentage of the title risk in return for an equal percentage of the insurance premium for the title insurance policy. The arrangement called for Fidelity to form a corporation, the Sponsored Captive Reinsurance Company (SCRC), which would share the title insurance risk with Fidelity in exchange for a share of the title insurance premium for each real estate transaction in which Pinnacle used Fidelity as the title insurer. The reinsurance premium would be paid to SCRC and allocated to appellants through a participation agreement. This arrangement would permit appellants to share in title revenue generated by Pinnacle without learning the title business or establishing or licensing a title agency.

On August 31, 2004, appellants created Southern California Title Solutions (SCTS), of which appellants were the sole officers and directors. SCTS was formed as the reinsurance entity to assume the risk of title insurance in the Fidelity program. In the documents filed with the California Secretary of State, SCTS described its business as "Title Reinsurance."

On September 1, 2004, SCTS through appellants signed a participation agreement for the Fidelity program. Under the terms of the participation agreement, appellants agreed to pay Fidelity a $10,000 initial participation fee and a $10,000 annual fee thereafter and to secure a $25,000 irrevocable letter of credit. Under the agreement, SCTS would be credited with 15 percent of the premiums of policies written by Fidelity for Pinnacle clients, minus a $350 administration fee, in exchange for assuming 15 percent of the liability for all claims on such policies. Fidelity retained responsibility to keep track of transactions brokered by Pinnacle utilizing Fidelity title insurance and to account for resulting premiums to be credited to SCTS.

As called for under the participation agreement, appellants obtained a secured letter of credit for $25,000 and paid Fidelity a $10,000 participation fee. The superior court found both conditions were performed by October 2004.

The participation agreement expressly required SCTS to disclose its economic interest and business affiliation with Fidelity to all Pinnacle real estate clients in which Fidelity provided the title insurance. Appellants were fully aware of this obligation to disclose and so testified at their hearing. Black knew Pinnacle's 500 plus agents would have to attach such a disclosure form to their documents. He had numerous contacts with Fidelity about obtaining a proposed disclosure statement, which he intended to have an attorney review and incorporate into Pinnacle's disclosure addendum. However, Black never obtained a proposed disclosure statement from Fidelity, and no such disclosures were ever made to Pinnacle's clients. Black understood it was his responsibility under the agreement to make the disclosure to the clients notwithstanding Fidelity's failure to provide a disclosure form.

On December 27, 2004, Black received a cashier's check in the amount of $8,059.49, payable to SCTS.[2] Fidelity's records indicate it made the payment and also credited SCTS with an additional sum of approximately $26,000 under the reinsurance program.

About this time, the California Department of Insurance (DOI) began to hold public hearings relating to captive reinsurance companies and title policies. The DOI found normal title insurance practice was not to use reinsurance because the typical loss for title insurance is no more than five percent. The DOI determined that reinsurance programs such as Fidelity's were not legitimate reinsurance, but rather a scheme in which title insurers paid real estate brokers illegal rebates in the form of "premiums."

In November 2004, the senior vice president and assistant general counsel of Fidelity wrote Black and advised him Fidelity had received inquiry letters from regulatory agencies of several states, including California, that were investigating title

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[2] Black testified he never cashed the check and it was his understanding SCTS needed to give Fidelity a list of transactions and an accounting of fees charged in the transactions to become entitled to the money, which SCTS never did. Black contended he voided the check and handed it to a Fidelity representative within a few days after receipt.

insurer practices related to reinsurance covering residential properties. Fidelity included copies of the inquiry letters and informed Black the purpose of its letter was to "keep you apprised of certain regulatory developments that could affect the reinsurance arrangement(s) between the FNF brands and your company."

The participation agreement provided several means by which it could be terminated, including by either party, for any reason, upon 90 days' prior written notice. After receiving Fidelity's November 2004 letter, Black purportedly orally told a Fidelity representative he did not want to proceed with the participation agreement. However, appellants admittedly never informed Fidelity in writing that they wished to terminate the participation agreement.

In February 2005, Fidelity's vice chairman wrote to appellants informing them, effective May 2005, Fidelity was terminating its participation agreement with SCTS because of criticism by state insurance regulators that such arrangements constituted illegal rebates.

Within a few months, in August 2005, the DRE contacted Black and Pinnacle seeking copies of pertinent documents as part of its investigation into reinsurance practices. An attorney for Black and Pinnacle responded in September 2005, contending that neither Black nor Pinnacle had entered into a reinsurance agreement with Fidelity and that the majority of the DRE's request lacked foundation.

In May 2006, Fidelity and SCTS signed a participation rescission agreement stating that "the [p]articipation [a]greement is hereby cancelled and rescinded, ab initio," SCTS has returned the $10,000 participation fee and "shall return" or cancel the irrevocable letter of credit, and the parties' respective status "shall be the same as if the [p]articipation [a]greement had never been executed."

Fidelity's cashier's check to SCTS ultimately was canceled in August 2006, and $8,059.49 was credited to Fidelity's account.

PROCEDURAL HISTORY

1. Accusation

In August 2007, the Department filed an accusation charging appellants with participating in an illegal reinsurance scheme created by Fidelity, under which title insurance companies would pay illegal rebates to real estate brokers who channeled business to them. The accusation alleged cause to discipline appellants pursuant to Business and Professions Code sections 10176, subdivision (g) (claiming or taking secret or undisclosed commissions in a transaction), 10177, subdivision (d) (willfully disregarding certain statutes), 10177, subdivision (g) (acting negligently or incompetently), 10177, subdivision (j) (engaging in fraud or unfair dealing) and 10177.4 (claiming, demanding or receiving referral fees from a title insurer).[3]

2. Administrative Decision

After an evidentiary hearing, an administrative law judge issued a proposed decision finding cause for disciplinary action against appellants pursuant to sections 10176, subdivision (g) and 10177, subdivision (j) for claiming or taking a secret or undisclosed amount of compensation, commission or profit in relation to the referral of customers to FNF. The administrative law judge cited conflicting expert evidence on whether the program constituted a disguised kickback or illegal rebate and stated that "[b]oth approaches to the issue are deemed to have merit." He therefore found the DRE had not met its burden of proving appellants had violated sections 10177.4 and 10177, subdivisions (d) and (g) for claiming, demanding or receiving commissions, fees or other consideration from a title insurance company for referral of customers. The proposed decision ordered Black's real estate license to be revoked for two years with rights to a

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[3] All further statutory references are to the Business and Professions Code.

restricted license and Potter to be publicly reproved.[4] The DRE adopted the administrative law judge's proposed decision.

3. Petition for Writ of Mandate

Appellants filed a petition for writ of mandate in the superior court requesting the court to exercise its independent review and direct the DRE to vacate its decision imposing discipline against appellants. Appellants contended the administrative law judge found no violations as to all the allegations in the accusation, except for one alleged violation for "making a secret profit." Appellants alleged they never made any claim or demand for any money and the DRE's own witness did not refute such matters. Appellants argued the check was "improperly" issued by the title company to appellants, they returned the check and it was never cashed. Appellants asserted the single violation found by the DRE was contrary to the evidence, the findings were not supported by evidence and the legal conclusions were not based upon the facts or correct law.

The superior court issued a tentative ruling denying the petition for writ of mandate. After hearing argument, the court adopted the tentative ruling as its final ruling. The court rejected appellants' contention that the DRE's findings were not supported by the weight of the evidence.

As to the section 10176, subdivision (g) violation of "claiming or taking secret or undisclosed commissions in a transaction," the court was not persuaded by appellants' claim that the record failed to show they participated in Fidelity's reinsurance program.

The trial court disbelieved appellants' claim that they terminated the participation agreement before it went into effect. The court noted the participation agreement required any termination to be in writing and on 90 days' notice. Appellants could produce no written document either terminating the participation agreement or stating they were not going to perform under it. The court expressly rejected appellants'

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[4] The administrative law judge found the disparate discipline was justified in light of Potter's only peripheral involvement and Black's "greater involvement and decision making."

argument that disclosures to customers were a "condition precedent" to performance, declaring, "[t]here is nothing about the requirement in . . . the [p]articipation [a]greement that SCTS provide appropriate disclosures to customers when entering into real estate transactions that is a condition precedent to the parties' contract." The court further observed, "[appellants] cannot rely on their own failure to obtain and provide the required disclosure forms to support the argument that the [p]articipation [a]greement was held in abeyance and never performed." The court indicated the overwhelming evidence was to the contrary. Furthermore, the court rejected appellants' contention that the administrative law judge erred in discounting appellants' testimony that they did not intend the participation agreement to go forward until they received the disclosure form from Fidelity. The court stated, "[t]he reasoning of the [administrative law judge] as to [appellants'] lack of credibility fully supports his conclusion."

The court also addressed appellants' argument that there was no evidence that FNF, as opposed to Fidelity, began to perform the agreement, saying: "The short answer is that the program was a Fidelity program. That it chose to act through a subsidiary, just as [appellants] acted through a subsidiary, is of little consequence. This is not a case where [appellants] can contend that they are protected by the corporate veil of either SCTS or FNF. Both were created as part of the overall program."

The trial court additionally observed that appellants disputed the administrative law judge's finding that the program required them to enter into reinsurance treaties with FNF. Appellants had described the arrangement as an "indemnity agreement" and contended the claimed error had bearing on the administrative law judge's decision that they violated section 10176, subdivision (g) for claiming or taking a secret payment prior to a real estate transaction. Appellants claimed they never used FNF, a reinsurer, for real estate transactions and thus could not have obtained a secret referral fee from it. The court found, however, that the Fidelity program called for Pinnacle to enter into reinsurance treaties with FNF. Thus, the administrative law judge's finding was supported by the weight of the evidence. Moreover, the court observed, the participation agreement required Fidelity to issue title insurance and cede a portion of the insurance

risk to FNF; SCTS then indemnified FNF for a portion of its risk and received payment for doing so. The court found that the change in the program, from reinsurance to an arrangement where the title insurance was issued by Fidelity and the payment was made by its subsidiary FNF, "does not bear significantly on whether section 10176[, subdivision] (g) was violated. Fidelity set up the program so that FNF could make the payment."

The trial court also rejected appellants' contention that they never received any money under the participation agreement, finding the assertion simply "not true." The court found that SCTS received a cashier's check in the amount of $8,059.49 in December 2004. It observed that "[t]he fact that the check was never negotiated is relevant, but not controlling." Although Black testified the check was returned "'immediately,'" the administrative law judge had found this assertion lacking in credibility. Appellants had waited some 20 months before crediting the money to Fidelity, "just when the DOI was investigating the reinsurance program." The court thus found substantial evidence supported the DRE's conclusion that appellants accepted, "at least for a period," a secret or undisclosed amount of compensation.

As to the section 10177, subdivision (j) provision allowing the DRE to impose discipline for dishonest or fraudulent acts, the trial court similarly rejected appellants' contentions. The court concluded the weight of the evidence supported a finding appellants engaged in fraud or dishonest dealing. Although appellants claimed they did not defraud their clients because they did not misrepresent anything, the court found evidence to establish appellants engaged in dishonest dealing. The court noted a real estate broker's obligations of undivided loyalty to the client included a duty of "fullest disclosure" of all material facts. However, the court determined, appellants' clients had no way of knowing of the existence of the relationship between SCTS and Fidelity. After entering into the participation agreement, the court noted, appellants had continued to direct their clients to Fidelity. The court concluded appellants had a duty under both the common law and contract to disclose their relationship with Fidelity, regardless of whether they ever received "a penny" under the agreement. Appellants admitted they did

not make such disclosure, and the court found the defense they were "awaiting the proper form" from Fidelity did not relieve them of this duty. "By failing to disclose that which [appellants] were obligated to disclose," the court decided, appellants engaged in "dishonest dealing."

The trial court thus found upon its independent review of the record that the DRE's findings, conclusions and discipline imposed were supported by the weight of the evidence. The trial court therefore issued a judgment denying the petition for writ of mandate. This timely appeal ensued.

STANDARD OF REVIEW

The right to practice a trade or profession is a fundamental vested right. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 173.) When such rights are at stake, a trial court reviews the administrative record independently. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143.) In a limited trial de novo, the trial court makes its own credibility determinations and draws its own inferences, affording a strong presumption of correctness to the administrative decision. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811-812 (*Fukuda*); *Morrison v. Housing Authority of the City of Los Angeles Bd. of Comrs.* (2003) 107 Cal.App.4th 860, 868 (*Morrison*).) The burden of proof rests on the complaining party to convince the court the agency's decision is contrary to the weight of the evidence. (*Fukuda*, *supra*, at pp. 817, 820.)

Although the trial court applies an independent judgment test, this court employs the substantial evidence test in reviewing the trial court's findings and decision. (*Fukuda*, *supra*, 20 Cal.4th at p. 824.) When the evidence supports more than one reasonable inference, we may not substitute our deductions for those of the trial court. (*Morrison*, *supra*, 107 Cal.App.4th at p. 868.)

DISCUSSION

1. Secret Payment

Section 10176, subdivision (g) provides that the DRE may impose discipline for "claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee

the full amount of the licensee's compensation, commission or profit . . . ." The trial court found appellants violated this statute, ruling "[s]ubstantial evidence supports the DRE's conclusion that [appellants] accepted, at least for a period, a secret or undisclosed amount of compensation."

Appellants contend they did not violate section 10176, subdivision (g), arguing "[t]here is no evidence that Black or Potter either claimed, or took, any payment at all under the [p]articipation [a]greement." Appellants assert that "the uncontradicted evidence establishes that SCTS was not performing under the agreement" and that "there was no payment." We disagree. Substantial evidence supports the trial court's findings that appellants performed under the participation agreement and that they received payment from Fidelity because of that arrangement.

Appellants concede they took "initial steps" in the performance of the participation agreement. They admit they created SCTS, paid a $10,000 administration fee and posted a $25,000 letter of credit. However, they claim "there is no evidence that this usage was related to the [p]articipation [a]greement." In support of this argument, they point to Black's uncontradicted testimony that Pinnacle had been using Fidelity entities for title insurance in 40 to 50 percent of its transactions for many years before the participation agreement was signed and assert this usage did not increase after the participation agreement.

Appellants' claim fails to acknowledge that the "initial steps" that appellants took are themselves significant and provide substantial evidence that they commenced performance under the participation agreement. Setting up SCTS, self-described as being in the title reinsurance business, was an integral part of accepting compensation from Fidelity. In the creation of SCTS, appellants established a conduit for the acceptance of the "ancillary revenue stream" to be received from Fidelity's sponsored captive reinsurance company. Appellants structured their arrangement so that SCTS would receive "premium" payments in exchange for the percentage of the risk assumed as a "reinsurer." SCTS allowed appellants to separate their reinsurance dealings from Pinnacle so that premium payments would be funneled from Pinnacle customers to

Fidelity to SCTS and ultimately to appellants. Appellants undertook precisely the steps described by Fidelity to initiate the participation agreement, which included: "[o]btain [c]ounsel [r]eview, [s]elect [p]articipant [e]ntity, [e]xecute [p]articipation [a]greement, and [p]ost [s]ecurity (LOC [letter of credit]) and [p]articipation [f]ee."

Appellants obtained their counsel's review of the participation agreement, executed the agreement, posted security in form of a $25,000 letter of credit from their bank, for which they had to post an equivalent amount of cash, and paid a $10,000 participation fee. That the usage of Fidelity for title insurance did not increase after the parties executed the participation agreement does not compel a conclusion the participation agreement never went into effect. Indeed, Fidelity's power point presentation of the program stressed that Fidelity "will continue to service [Pinnacle's] transactions" and there would be "no interruption of service and quality" and "no operational changes," the only difference being that appellants "share[] in any profits/losses for [Pinnacle's] own captive business."

In further performance of the participation agreement, FNF set up a protected "cell," a separate account established and maintained by FNF in the name of the "[p]articipant [i.e., SCTS]," to allocate funds and credit and to make distributions from that cell "at least annually, as consideration for the [p]articipant's indemnity obligations . . . ." Fidelity's custodian of records kept records including a spreadsheet entitled, "FNF Title Reinsurance Company [¶] Broker Premium Assumed and Distributed Since Inception." Consistent with the participation agreement, the spreadsheet credits SCTS with earning "Premiums Assumed" of $34,046.71, with "Cash Distributions Made" of $8,059.49. This record, produced by Fidelity under subpoena, conforms with the requirements of the participation agreement, whereby the participant's protected "cell" was to be accounted for separately and reflect: (1) "Assumed Premium," (2) value of assets tendered by the participant, (3) participant expenses, (4) losses, (5) reserves, (6) "distributions to the [p]articipant," and (7) other required items "to accurately reflect the reinsurance activities of the Company [i.e., FNF] with respect to the [p]articipant."

The administrative law judge found the spreadsheet to be "self-explanatory," and the trial court agreed that Fidelity's record reflected appellants' accrual of premiums and receipt of cash disbursements. The administrative law judge properly received the document in evidence and drew the permissible inference that it accurately reflected the matters it purported to reflect. (See Gov. Code, § 11513.) Exercising its independent judgment, the trial court also found the document persuasive and drew appropriate inferences.

By taking initial, substantive, and significant steps toward the establishment and operation of SCTS and meeting the requirements of their agreement with Fidelity, appellants performed under the participation agreement. As both the administrative law judge and the trial court found on substantial evidence, even if appellants ended their relationship with Fidelity, they performed under the participation agreement for at least some period of time and claimed or accepted secret or undisclosed compensation. As the trial court summed up: "You sign an agreement; you put up $10,000; you obtain a letter of credit; you use Fidelity; they create an account keeping track of the money that is owed to you; they cut you a check; they send it to you. You send it back at some point; it is unclear when you did. *That is performance*." (Italics added.)

Appellants both admitted, moreover, that they were aware of their duties to disclose these profits to their clients when securing title insurance from Fidelity. Yet when Pinnacle's clients used Fidelity for title insurance, appellants made no disclosure to the clients of the participation agreement and appellants' sharing of the policy premiums paid by those clients.

There is substantial support for the trial court's finding that, even if the showing might have been insufficient to find the participation agreement essentially to be a "rebate" or "kickback," appellants had a duty to disclose that arrangement to Pinnacle customers who purchased title insurance from Fidelity. There was a sufficient showing that appellants violated their duties of disclosure under section 10176, subdivision (g).

2. Fraudulent or Dishonest Conduct

Section 10177, subdivision (j) provides that the DRE may impose discipline on a licensee who has "[e]ngaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing." The trial court determined "[t]he weight of the evidence supports a finding that [appellants] engaged in fraud or dishonest dealing." The court found that the clients of Pinnacle had no way of knowing of the existence of a relationship between SCTS, the entity appellants created and controlled, and Fidelity. Nevertheless, the court found, appellants continued to direct their clients to Fidelity for title insurance after entering into the participation agreement. Thus, the court concluded, "Regardless of whether they ever received a penny under the agreement, [appellants] had a duty under both common law and contract to disclose their relationship with Fidelity. . . . By failing to disclose that which they were obligated to disclose, they engaged in dishonest dealing."

"The law imposes on a real estate agent 'the same obligation of undivided service and loyalty that it imposes on a trustee in favor of his beneficiary.' [Citations.] This relationship not only imposes upon him the duty of acting in the highest good faith towards his principal but precludes the agent from obtaining any advantage over the principal in any transaction had by virtue of his agency. [Citation.] 'Such an agent is charged with the duty of fullest disclosure of all material facts concerning the transaction that might affect the principal's decision. [Citations.]'" (*Batson v. Strehlow* (1968) 68 Cal.2d 662, 674-675; see also *Roberts v. Lomanto* (2003) 112 Cal.App.4th 1553, 1563 (*Roberts*).) The duty to disclose arises from the presumption that all profits resulting from the relationship between a principal and agent belong to the principal. (*Roberts*, at p. 1564; *Crogan v. Metz* (1956) 47 Cal.2d 398, 404-405.)

Accordingly, "'[a] real estate licensee, *while acting in his or her capacity as such,* must not receive any benefit from the transaction of his or her agency other than that which is known and accepted by the principal. The agent will not be permitted to retain *anything* that might otherwise derive from participation in the transaction unless the agent *fully* discloses the nature *and amount* of the benefit and receives the approval of the

principal. *It is totally immaterial that the transaction is otherwise fair to the principal, or that the principal receives exactly the price wanted for the property* [or, as in the present case, pays exactly the same amount to close the property transaction] . . . .'" (*Roberts, supra,* 112 Cal.App.4th at p. 1563.)

Appellants assert these principles do not apply because there is no evidence appellants ever obtained any advantage, as they "did not request or receive any compensation." Under *Batson,* an agent must act in good faith and is charged with the duty of full disclosure of all material facts that might affect a principal's decision. (*Batson, supra,* 68 Cal.2d at p. 675.) The administrative law judge, and the superior court in its independent review, found that appellants engaged in fraud and dishonest dealing by failing to make full disclosure to the clients of Pinnacle who purchased title insurance through Fidelity. By withholding information from Pinnacle's clients regarding appellants' partnership with Fidelity, appellants neglected their duty of full disclosure and did not act in good faith. In signing the participation agreement and in taking all the steps necessary to secure its performance, appellants at the very least were claiming an undisclosed compensation. The evidence in the record establishes appellants received, at least for some period, undisclosed compensation as a result of the participation agreement.

That appellants did not do anything different after signing the participation agreement than they would have done before is immaterial. And whether Pinnacle's clients suffered actual damage by the failure to disclose is not the issue. The fact is that Pinnacle's clients were not given all the information necessary to determine whether to enter into the transaction. Had those clients been informed of appellants' full role, they may have chosen to place their title insurance with a non-Fidelity entity or sought to have their premium reduced by the cost of such "reinsurance." That Fidelity was willing to provide appellants with an "ancillary revenue stream," essentially a sharing of profits, itself may have suggested to Pinnacle's clients that Pinnacle was not securing for them the best deal possible.

In short, appellants' conduct in failing to disclose did not comport with their "duty of undivided loyalty" to their clients, and substantial evidence supports the superior court's determination in this regard.

DISPOSITION

The judgment is affirmed. Respondent DRE is to recover costs on appeal.

FLIER, Acting P. J.

We concur:

BIGELOW, J.

MOHR, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.